

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz for)	ET Docket No. 00-258
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	

REPLY TO JOINT OPPOSITION

The Wireless Communications Association International, Inc. ("WCA"), pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its reply to the sole opposition to WCA's Petition for Reconsideration of the Commission's *Second Report and Order* in the above-captioned proceeding.¹

As discussed in more detail below, the Joint Opposition filed by AT&T Wireless Services, Inc. ("AT&T") and Verizon Wireless ("Verizon") illustrates why WCA finds so troubling the piecemeal approach the Commission has taken with regard to the Multipoint Distribution Service ("MDS") in this proceeding. Now that the Commission has decided to relocate MDS from the 2150-2162 MHz band in order to accommodate the desire of AT&T and Verizon to provide Advanced Wireless Services ("AWS"), AT&T and Verizon no longer have any incentive to provide constructive input into finding a suitable new location for MDS. Thus, while WCA certainly appreciates the Joint Opposition's acknowledgment that "MDS operators

¹ See Petition of Wireless Communications Ass'n Int'l for Reconsideration, ET Docket No. 00-258 (filed Feb. 24, 2003).

vacating the 2150-2160 MHz [*sic*]² band are entitled to comparable replacement spectrum and reimbursement for legitimate relocation costs,”³ the Joint Opposition mischaracterizes WCA’s petition, rehashes proposals consistently rejected by the Commission and, at bottom, is nothing more than a transparent attempt to undermine the ability of licensees of MDS channels 1 and 2/2A to compete against AT&T and Verizon in the marketplace.⁴

At the outset, WCA must again respond to the allegation that adoption of its proposal for relocating MDS from contiguous spectrum at 2150-2162 MHz to paired spectrum at 1910-1916/1990-1996 MHz band (the “MDS Industry Compromise”)⁵ would constitute a “windfall.”⁶ As WCA has already pointed out, one of the critical features of the MDS channels at 2150-2162

² As WCA has demonstrated time and again, and as is recognized in the *Third Notice of Proposed Rulemaking* in this proceeding, there are a wide variety of MDS licensees that have primary status in the 2160-2162 MHz portion of the MDS band. See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 18 FCC Rcd 2223, 2254-55 n. 167 and Appendix E (2003)[“*Third NPRM*”]. Even the Joint Opposition acknowledges that “MDS stations utilizing the 2160-2162 MHz frequencies were ‘grandfathered’ when the Commission reallocated the band to emerging technologies . . .” See Joint Opposition at 3 n. 8. This is not a trivial point, since the primary stations listed on Appendix E to the *Third NPRM* have protected service areas that cover more than one-third of the population in the United States.

³ Joint Opposition at 6.

⁴ It should be noted that MDS channels 1 and 2 are used extensively to provide competition to the cable and DSL broadband services offered by corporate affiliates of AT&T and Verizon. To the extent that AT&T and Verizon are successful in delaying this proceeding (during which time many MDS licensees are reluctant to deploy facilities that will have to be relocated) and eventually shunting MDS channels 1 and 2/2A to inferior spectrum, their corporate affiliates stand to benefit significantly, at the expense of competition and the benefits competition brings to the public. As the Commission recently recognized, MDS systems “offer a significant opportunity to provide competition to cable and (Digital Subscriber Line) DSL services in the provision of broadband services in urban and rural areas.” *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, FCC 03-56, WT Docket No. 03-66, at ¶ 33 (rel. Apr. 2, 2003)[“*MDS/ITFS Rule Rewrite NPRM*”].

⁵ See Letter from Wireless Communications Ass’n Int’l *et al.*, to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 (filed July 11, 2002). The full text of WCA’s proposal, titled “A Compromise Solution for Relocating MDS From 2150-2162 MHz,” was attached to that letter and is referred to herein as the “MDS Industry Compromise.”

⁶ Joint Opposition at 3.

MHz is that they each can be used for stand-alone two-way services through deployment of time division duplex (“TDD”) technology.⁷ Yet, the record in this proceeding is clear that this very ability of MDS licensees to deploy TDD technology effectively precludes relocation of MDS to most of the alternative bands proposed by other parties in this proceeding, since substantial guardbands are required to separate TDD services from frequency division duplex (“FDD”) services.⁸ Indeed, in their recent comments in WT Docket No. 02-353, both AT&T and Verizon specifically sought to limit use of the 1710-1755/2110-2155 MHz band to FDD technologies in order to avoid interference between FDD and TDD technologies.⁹

Thus, while the MDS Industry Compromise reflects the willingness of MDS licensees to forego the flexibility to deploy TDD technology in order to accommodate relocation, licensees of MDS channels 1 and 2/2A must continue to have the ability to provide stand-alone two-way services. Relocating MDS licensees to paired spectrum at 1910-1916/1990-1996 MHz (over which they may provide two-way FDD services) is merely a *quid pro quo* for the surrender of their current ability to provide two-way TDD service over unpaired spectrum at 2150-2162 MHz. MDS licensees receive no “windfall” in that exchange.¹⁰

⁷ See MDS Industry Compromise at 6.

⁸ See, e.g., *id.* at 9-13 (demonstrating that 1910-1930 MHz, 1990-2025 MHz, and 2185-2200 MHz bands are not feasible for MDS relocation due to guardband issues); Comments of Wireless Communications Ass’n Int’l, ET Docket No. 00-258, at 23-27 (filed April 14, 2003); Letter from Wireless Communications Ass’n Int’l *et al.*, ET Docket No. 00-258, at 9 (filed Aug. 29, 2002) (demonstrating that 2156-2168 MHz band is not feasible relocation spectrum for MDS due to guardband issues).

⁹ See Comments of AT&T Wireless, WT Docket No. 02-353, at 7-9 (filed Feb. 7, 2003)(“AT&T Wireless appreciates the Commission’s commitment to technical flexibility, including the use of time division duplex (“TDD”) technologies, but [] is concerned about the severe interference TDD causes to frequency division duplex (“FDD”) operations in adjacent bands.”); Comments of Verizon Wireless, ET Docket No. 02-353, at 4-6 (filed Feb. 7, 2003).

¹⁰ AT&T and Verizon mischaracterize both the MDS Industry Compromise, the *Second Report and Order* in this proceeding and the *Notice of Proposed Rulemaking* regarding AWS service rules when they cite these documents in support of the proposition that paired spectrum has “increased value.” Joint (continued on next page)

Moreover, the suggestion by AT&T and Verizon that the Commission accommodate relocated MDS licensees in the 2500-2690 MHz band is nothing more than a rehash of a proposal that Verizon advanced unsuccessfully more than two years ago.¹¹ Tellingly, when the Commission issued the *First Report and Order* in this proceeding, it did not merely reject Verizon's suggestion – indeed, the Commission made it clear that it was not going to reallocate spectrum from current MDS and Instructional Television Fixed Service (“ITFS”) licensees at 2500-2690 MHz band to facilitate AWS.¹² Verizon did not seek reconsideration of that decision and, not surprisingly, neither the subsequent *Further Notice of Proposed Rulemaking* or *Third NPRM* in this proceeding even suggest that the 2500-2690 MHz band is appropriate relocation spectrum for MDS licensees moved from 2150-2162 MHz.

Opposition at 3. While these documents certainly note that today's wireless voice carriers are using paired spectrum and that they are deploying new low-speed data services on paired spectrum, neither WCA nor the Commission has ever suggested that paired spectrum is more valuable than unpaired spectrum. Indeed, paragraph 30 of the latter document, on which AT&T and Verizon rely, does not even address the paired/unpaired issue, while the following paragraph clearly is neutral as to whether paired or unpaired spectrum is more valuable. *See Service Rules for Advanced Wireless Services in the 1.7 and 2.1 GHz Bands*, 17 FCC Rcd 24135, 24148 (2002).

¹¹ *See* Comments of Verizon Wireless, ET Docket No. 00-258, at 15 (filed Feb. 22, 2001); Reply Comments of Verizon Wireless, ET Docket No. 00-258, at 14 (filed Mar. 9, 2001). WCA notes with interest that the Joint Opposition does not advance the proposal Verizon made in response to the *Third NPRM* to relocate MDS to the 2490-2500 MHz band. *See* Reply Comments of Verizon Wireless, ET Docket No. 00-258, at 7-8 (filed April 28, 2003). WCA can only assume that Verizon now agrees with WCA that such an approach is unworkable because of interference between the TDD operations in which MDS will engage if relocated to contiguous spectrum and the base-to-subscriber FDD Mobile Satellite Service terrestrial facilities that would operate on spectrum immediately adjacent to the 2490-2500 MHz band.

¹² *See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, *First Report and Order and Memorandum Opinion and Order*, 16 FCC Rcd 17222, 17223 (2001) (“[B]ecause the 2500-2690 MHz band is extensively used by incumbent ITFS and MMDS licensees, and in order to preserve the viability of the incumbent services, we are not relocating the existing licensees or otherwise modifying their licenses.”) [*“AWS First Report and Order”*].

Also wrong is the contention by AT&T and Verizon that the MDS licensees at 2150-2162 MHz will no longer need their spectrum if the Commission adopts the proposal by WCA and the two principal ITFS representatives for rule changes to better accommodate next generation two-way MDS/ITFS broadband service (the “MDS/ITFS Rewrite Proposal”).¹³ In particular, the Joint Opposition claims that WCA “failed altogether to mention the 2.1 GHz channels in its reconfiguration plan.”¹⁴ That assertion is factually incorrect – WCA recommends that AT&T and Verizon revisit the MDS/ITFS Rewrite Proposal, which specifically states:

WCA, NIA and CTN appreciate that the Commission presently has before it in ET Docket No. 00-258 various proposals for relocating MDS from the 2.1 GHz band (including one submitted by a coalition that includes WCA). For purposes of this proceeding, it makes sense to amend the rules applicable to MDS at 2.1 GHz to conform to those for the [proposed Lower Band Segment and Upper Band Segment at 2500-2690 MHz]. If the Commission subsequently decides in ET Docket No. 00-258 to relocate MDS to other spectrum, it can in that proceeding develop appropriate licensing and technical rules.¹⁵

In other words, the MDS/ITFS Rewrite Proposal fully contemplated that the licensees of MDS channels 1 and 2/2A would retain their spectrum (either 2150-2162 MHz or replacement spectrum), but recognizes that it would be premature to adopt service rules for a replacement band absent a decision as to what spectrum those channels will occupy. The Commission’s subsequent *Notice of Proposed Rulemaking* in WT Docket No. 03-66 recognizes the wisdom of this approach. It presumes that licensees on MDS channels 1 and 2/2A will continue to hold

¹³ See “A Proposal for Revising the MDS and ITFS Regulatory Regime,” filed by the Wireless Communications Ass’n Int’l, National ITFS Ass’n and Catholic Television Network, RM-10586 (Oct. 7, 2002)[“MDS/ITFS Rewrite Proposal”].

¹⁴ Joint Opposition at 6.

¹⁵ MDS/ITFS Rewrite Proposal at 23 n. 63.

their authorizations, but defers proposing specific service rules pending identification of relocation spectrum. More specifically, the *Notice of Proposed Rulemaking* states that:

In light of the fact that we do not yet know where MDS licensees operating on Channels 1 and 2 (or 2A) will be relocated, we will not propose changes to service rules for those channels at this time. Depending on the relocated spectrum that MDS licensees receive, additional technical rules may be necessary to accommodate the technical characteristics of that spectrum. Once relocation spectrum for these MDS licensees has been identified, we will issue a further notice of proposed rulemaking in this proceeding seeking comment on service rules for relocated licensees.¹⁶

In addition, AT&T and Verizon overlook the fact that the MDS/ITFS Rule Rewrite Proposal and the *Notice of Proposed Rulemaking* in WT Docket No. 03-66 share an underlying premise that every incumbent MDS and ITFS licensee will retain under a new bandplan the same quantity of spectrum it currently has under the existing interleaved band plan for 2500-2690 MHz.¹⁷ Indeed, in the *MDS/ITFS Rule Rewrite NPRM* the Commission makes clear that “we do not intend to evict any incumbent licensees from the affected band . . . nor do we intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, we anticipate that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.”¹⁸ In that regard, the proposal is entirely consistent with the Commission’s rationale for preserving the 2500-2690 MHz band intact in the *First Report and Order* (i.e., that incumbent MDS/ITFS operators are providing important commercial and educational services in

¹⁶ See *MDS/ITFS Rule Rewrite NPRM* at ¶ 153.

¹⁷ See MDS/ITFS Rewrite Proposal at 12; *MDS/ITFS Rule Rewrite NPRM* at ¶ 2.

¹⁸ *MDS/ITFS Rule Rewrite NPRM* at ¶ 2. See also *id.* at ¶ 46.

the 2500-2690 MHz band, and that reducing the amount of spectrum available for those services would not serve the public interest).¹⁹

In sum, the Joint Opposition offers no meaningful response to WCA's Petition for Reconsideration of the *Second Report and Order* other than to suggest relocation of MDS to a band the Commission has already rejected. In contrast, WCA has demonstrated that the Commission erred in deciding to strip the 2150-2162 MHz band from MDS without identifying appropriate relocation spectrum or adopting provisions for the compensation of relocation expenses. WCA certainly hopes that the Commission will shortly rectify this error through adoption of the MDS Industry Compromise and thereby moot WCA's call for reversal of the *Second Report and Order*. However, failure to provide MDS with appropriate relocation spectrum and compensation (which even AT&T and Verizon agree MDS licensees must receive) will leave the Commission no option but to restore MDS to the 2150-2162 MHz band.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

By: /s/ Andrew Kreig
Andrew Kreig
President

1140 Connecticut Avenue, N.W.
Suite 810
Washington, D.C. 20036-4001
(202) 452-7823

¹⁹ See *AWS First Report and Order*, 16 FCC Rcd at 17238 (noting that "the services currently being provided and planned in the 2500-2690 MHz band – while fixed in nature – have significant value").

NEW ADDRESS EFFECTIVE 6/1/03

*1333 H Street NW
Suite 700
Washington, DC 20005*

May 29, 2003

CERTIFICATE OF SERVICE

I, LaTashia T. Williams, hereby certify that the foregoing Reply to Joint Opposition has been served this 29th day of May, 2003 by depositing copies with the United States Postal Service, first class mail postage prepaid, addressed as follows:

Douglas I. Brandon
David P. Wye
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, D.C. 20036

John T. Scott, III
Donald C. Brittingham
Verizon Wireless
1300 I Street, N.W.
Suite 400W
Washington, D.C. 20005

/s/ LaTashia T. Williams

LaTashia T. Williams